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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



OS Asset, Inc. and Outback  
Steakhouse of Florida, Inc.

Opposer,

v.

Opposition No. 125,328

John Herod LLC

Applicant.



03-27-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #57

ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES

Applicant, John Herod LLC hereby answers the Notice of Opposition filed by OS Asset Inc. and Outback Steakhouse of Florida, Inc. and enters its affirmative defenses.

1. Applicant admits that OS Asset Inc. is the record owner of a number of U.S. trademark registrations. Applicant is without specific knowledge to affirm or deny the remaining allegations in Paragraph 1 of the Notice of Opposition and Applicant therefore denies same.

2. Admitted.

3. Applicant admits that Opposer is in the business of operating and franchising restaurants under the name **OUTBACK STEAKHOUSE**. Applicant is without specific knowledge of the remaining allegations in Paragraph 3 of the Notice of Opposition and therefore denies same.

4. Applicant admits that Opposer uses many marks dominated by the word "outback" for its restaurant services. Applicant admits that OS Assets Inc. is the record owner of many trademark registrations at the United States Patent and Trademark Office. Applicant is without specific knowledge regarding other uses of Opposer's marks and therefore denies the remaining allegations of Paragraph 4.

5. Applicant admits that a number of trademark registrations are attached to the back of the Notice of Opposition.

6. Applicant is without specific knowledge of the facts alleged in Paragraph 6 in the Notice of Opposition and therefore denies same.

7. Applicant is without specific knowledge of the facts alleged in Paragraph 7 in the Notice of Opposition and therefore denies same.

8. Admitted.

9. Paragraph 9 in the Notice of Opposition contains no factual allegations, but merely conclusions of law and therefore is denied.

10. Paragraph 10 in the Notice of Opposition contains no factual allegations, but merely conclusions of law and therefore is denied.

11. Applicant repeats and realleges each and every statement made in Paragraphs 1-10 above.

12. Applicant admits that Opposer has had at least one trademark registration on the Principal Register of the United States Patent and Trademark Office since 1988. Applicant has no knowledge of the remaining allegations of

Paragraph 12 or such allegations are conclusions of law. Therefore, applicant denies same.

13. Paragraph 13 in the Notice of Opposition contains conclusions of law and therefore Applicant denies same.

### **AFFIRMATIVE DEFENSES**

1. The Notice of Opposition fails to state a claim upon which relief may be granted.

2. Upon information and belief, Opposer has not made use of its **OUTBACK** mark or marks in connection with goods competitive with those of Applicant.

3. Applicant's **OUTBACK** mark is weak and dilute and only deserving of an extremely narrow scope of protection.

4. Applicant's goods and services are sold to completely different classes of customers, through different channels of trade and promoted through completely different methods than the classes of customers, channels of trade and methods of promotion of Opposer.

5. Opposer has allowed numerous third parties to make use of the **OUTBACK** mark in connection with a wide variety of goods and services, especially including clothing.

WHEREFORE, it is respectfully requested that this Opposition be denied, rejected or otherwise terminated with prejudice and that the application of Applicant for the mark **OUTBACK SHEEPSKINS** be allowed to proceed.

Respectfully submitted,

JOHN HEROD LLC

By: \_\_\_\_\_



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